

PRESENT: HON. RICHARD F. BRAUN

PART 23

J.S.C. Justice

Index Number : 400318/2008
NICKEY, AARON H.
vs.
HUMAN RIGHTS - DIVISION
SEQUENCE NUMBER : # 001
ARTICLE 78

INDEX NO. 400318-08
MOTION DATE 9/4/08
MOTION SEQ. NO. #001
MOTION CAL. NO. _____

papers
are read on this motion to/for overturn determination of no probable cause

Petition. Verified Petition

PAPERS NUMBERED	
Notice of Motion/ Order to Show Cause - Affidavits - Exhibits ...	1
Answering Affidavits - Exhibits	2
Replying Affidavits	

1/08

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Notice of Motion/ Order to Show Cause - Affidavits - Exhibits ...
Answering Affidavits - Exhibits _____
Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered ^{adjudged} that this motion *petition is denied.*
This constitutes the decision, order, and judgment. See separate Opinion.

FILED
APR - 6 2009
NEW YORK
COUNTY CLERK'S OFFICE

NYS SUPREME COURT
RECEIVED
DEC 11 2008
MOTION SUPPORT OFFICE

FILED
DEC 11 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: New York, New York, December 8, 2008 ^{ENTERED}

nr

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

Norman Goodman
CLERK

CASE DISP

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 23**

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In the Matter of the Application of

Index No. 400318/08

AARON H. NICKEY

OPINION

Petitioner(s)

FILED

-against-

APR - 6 2009

New York State Division
of Human Rights

NEW YORK
COUNTY CLERK'S OFFICE

Respondent(s)

FILED
DEC 17 2008
COUNTY CLERK'S OFFICE
NEW YORK

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RICHARD F. BRAUN, J.:

Petitioner has brought a special proceeding pursuant to Executive Law § 298. He seeks to overturn respondent's decision that he did not demonstrate that he had probable cause against his former employer that it discriminated against him because of his race or gender.

The standard of review in this proceeding is whether respondent's decision lacked a rational basis or was arbitrary and capricious (*Matter of Tanalski v New York State Div. of Human Rights*, 262 AD2d 117, 118 [1st Dept 1999]). It was petitioner who had the burden of showing that there was probable cause for his complaint (*Matter of McFarland v New York State Div. of Human Rights*, 241 AD2d 108, 113 [1st Dept 1998]).

Petitioner has not shown that his former employer was not justified in terminating his employment due to his having an altercation with another employee in the proximity of children and guests, especially where the other employee, a white woman, was terminated also. Furthermore, respondent has demonstrated that petitioner's former employer has terminated numerous people of various races, genders, and ethnic backgrounds in a relevant two year period. Petitioner's being

replaced by a Latina does not itself demonstrate probable cause for his complaint.

Thus, petitioner did not sustain his burden. Therefore, by this court's separate December 8, 2008 decision, order, and judgment, the petition has been denied.

Dated: New York, New York
December 9, 2008



RICHARD F. BRAUN, J.S.C.

FILED

APR - 6 2009
NEW YORK
COUNTY CLERK'S OFFICE

FILED
DEC 11 2008
COUNTY CLERK'S OFFICE
NEW YORK